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No. 10-591

Supreme Court, U.S.
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IN THE

Supreme Court of the United States

HIGHLAND CAPITAL MANAGEMENT, L.P.,

Petitioner,

v.

LEONARD SCHNEIDER, ET AL.,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF OF RESPONDENT RBC CAPITAL MARKETS CORPORATION, LLC IN SUPPORT OF PETITIONER

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DISCLOSURE STATEMENT

Respondent RBC Capital Markets, LLC (f/k/a RBC Capital Markets Corporation), a private non-governmental party, is an indirect, wholly-owned subsidiary of the Royal Bank of Canada, which is a publicly-traded company.

RESPONSE IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

Pursuant to Supreme Court Rule 12.6, RBC Capital Markets, LLC (f/k/a RBC Capital Markets Corporation) ("RBC"), a third-party defendant and third-party counter-claimant below, respectfully submits this response in support of the petition for a writ of certiorari of Highland Capital Management, L.P. ("Highland") in *Highland Capital Management, L.P. v. Leonard Schneider, et al.*, No. 10-591 ("HCM Petition"). Highland seeks review of the decision of the United States Court of Appeals for the Second Circuit in *Highland Capital Management, L.P., et al. v. Leonard Schneider, et al.*, 607 F.3d 322 (2d Cir. 2010). This response is being submitted within twenty days of Highland's petition having been docketed on November 4, 2010.

In the event the Court grants certiorari, then RBC will file a Brief on the Merits as Respondent in Support of Highland. *See* Sup. Ct. R. 25.1

REASONS FOR SUPPORTING HIGHLAND'S PETITION

This case presents important questions regarding the limits placed on appellate review of jury verdicts by the Seventh Amendment and the deference to be given to a trial court's decision denying judgment as a matter of law on sufficiency of evidence grounds.

At trial, the jury, in a unanimous verdict, awarded RBC in excess of $17 million in damages, including $5 million for lost business, for breach of contract and

awarded Highland in excess of $22 million in damages as a third-party beneficiary. Following the jury verdict, the Schneiders moved for judgment as a matter of law under Rule 50(b) or, in the alternative, for a new trial under Rule 59. After extensive briefing, the District Court denied the Schneiders' motion in all respects and found that there was sufficient evidence to support the jury's verdict.

The Schneiders timely appealed the judgment to the United States Court of Appeals for the Second Circuit. The Second Circuit panel reversed the District Court's denial of the Schneiders' Rule 50(b) motion and held that there was insufficient evidence to sustain a finding that the Schneiders had breached an oral agreement with RBC. HCM Petition at 8. In its opinion, the panel ignored the evidence cited by the District Court as supporting the jury's verdict and failed to give any deference to the District Court's findings regarding the sufficiency of the evidence. HCM Petition at 8.

In its petition, Highland seeks certiorari on the grounds, among others, that the Reexamination Clause of the Seventh Amendment limits federal appellate review of a trial court's denial of judgment as a matter of law following a jury verdict. HCM Petition at 17.[1] Highland notes in its Petition that the purpose of the Reexamination Clause was to prevent appellate review

1. RBC and Highland each filed timely petitions for rehearing with the Second Circuit. RBC's petition for rehearing was denied on August 23, 2010. RBC filed its timely petition for a writ of certiorari on November 19, 2010 ("RBC Petition"), in accordance with Sup. Ct. R. 13.1 and 13.3.

of jury verdicts (HCM Petition at 18-19), and it is the jury's function, not an appellate court's, to weigh the conflicting evidence and to judge the credibility of witnesses, (HCM Petition at 21). RBC agrees. RBC Petition at 19-28.

Highland also notes that, in deciding a motion for judgment as a matter of law where the trial judge has upheld the jury's verdict on sufficiency of evidence grounds, deference should be afforded to a trial judge who has the "'unique opportunity to consider the evidence in the living courtroom context,' while appellate judges see only the 'cold paper record.'" HCM Petition at 22 (citing *Gasperini v. Ctr. For Humanities, Inc.*, 518 U.S, 415, 435 (1996)). As Highland emphasized, the trial judge, in his lengthy opinion denying judgment as a matter of law and sustaining the jury's verdict, listed significant pieces of evidence that supported the jury's findings. HCM Petition at 24-26. In contrast, the appellate panel did not review this evidence in favor of the non moving party or even acknowledge the trial judge's opinion. HCM Petition at 26-27. In its petition, Highland submits that these failures require guidance from this Court regarding the appropriate standard of appellate review. HCM Petition at 27-28. RBC concurs that the instant case would be an appropriate vehicle for certiorari so that the Court may provide guidance to appellate courts regarding the deference to be given to jury verdicts and to the trial courts reviewing such verdicts in accordance with the Reexamination Clause of the Seventh Amendment. RBC Petition at 28-31.

Finally, RBC agrees with Highland that granting certiorari in the instant case to review the constitutional

limitations on appellate review of jury verdicts would also have the significant and important collateral benefit of eliminating the uncertainty in the securities markets created by the Second Circuit's decision. HCM Petition at 28-32; RBC Petition at 31-33.

CONCLUSION

The petition for writ of certiorari should be granted.

Respectfully submitted,

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